

INITIAL BRIEF OF
CITIZENS TELECOMMUNICATIONS COMPANY
OF ILLINOIS

DOCKET NO. 01-0539
83 ILLINOIS ADMINISTRATIVE CODE PART 731
WHOLESALE SERVICE QUALITY FOR
TELECOMMUNICATIONS CARRIERS

September 25, 2002

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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Citizens Telecommunications Company of Illinois (“Citizens”) through its attorneys, hereby submits to the Illinois Commerce Commission (“Commission”) this Initial Brief. Citizens’ Initial Brief focuses only on the sections of the Part 731 rules that will potentially impact Level 2 Carriers, specifically Parts 731.600 through 731.635 and the supporting definitions in 731.105.

I. EXECUTIVE SUMMARY

On May 8, 2000, Staff of the Commission (“Staff”) filed Direct Testimony and proposed Part 731 rules in this proceeding. ICC Staff Ex. 1, Attachment 1.0. On June 11, 2002, Mr. Kim Harber and Mr. Ken Mason filed testimony on behalf of Citizens. See Citizens Ex. 1 and Ex. 2. Citizens’ recommended revisions to Staff’s proposed rules were included in Citizens Ex. 1. Attachment 1.1. Staff supplemented its proposed rules in Staff Ex. 7, Attachment 7.1 filed on June 11, 2002. Citizens’ witnesses Harber and Mason filed Rebuttal Testimony on July 16, 2002. Citizens Ex. 4 and Ex. 5.

With its testimony, Staff proposed that all Level 2 Carriers be subject to the same wholesale service quality standards for Unbundled Local Loops; Interconnection Trunks;

Resold Local Services; Collocation; Loss Notification and Customer Service Records. Staff has also proposed that Level 2 Carriers be subject to wholesale service quality measures for de-conditioning loops and provisioning loops used to provide “advanced services”. Given the limited level of wholesale services provisioned by Level 2 Carriers, the list of wholesale services covered by Part 731 is too broad and extensive for purposes of setting rules of general applicability for Level 2 Carriers. The Commission should reduce the initial scope of wholesale services covered by the Part 731 Rules to only include Unbundled Local Loops, Interconnection Trunks and Resold Local Lines.

The Commission should also establish minimal thresholds of wholesale service activity before the measures and standards, remedies and reporting requirements included in section 731.605, 731.610 and 731.615 apply to Level 2 Carriers. The Commission’s rules should not require Level 2 Carriers to meet the proposed wholesale service quality standards 100% of the time or pay credits to the carriers requesting wholesale service. Instead, a 90% standard for provisioning and a 95% standard for repairs, similar to the standards used in the Part 730 Rules, should apply. If a Level 2 Carrier achieves these levels for a service, the Level 2 Carrier would not be subject to credits/remedies for that particular wholesale service. The remedies for a single order should also be capped at 10 times the monthly recurring charge.

Given the absence of any evidence regarding competitive carriers experiencing problems with the provisioning or repair of wholesale services by Level 2 Carriers and the low volume of wholesale activity that has occurred to date for Level 2 Carriers, there is no regulatory need to establish extensive and unachievable wholesale service quality rules for Level 2 Carriers in this proceeding. Citizens’ testimony, which is the only

evidence submitted by a potential Level 2 Carrier in this proceeding, supports allowing Level 2 Carriers to propose and file their own company-specific Wholesale Service Quality Plan for review by interested parties and final approval by the Commission. Level 2 Carriers that elect to file a Wholesale Service Quality Plan would not be subject to the standards and measures included in 731.600 through 731.635. Level 2 Carriers that do not file a wholesale service quality plan would be subject to these standards.

ARGUMENT

I. THE “LEVEL 2” WHOLESALE SERVICE QUALITY STANDARDS PROPOSED BY STAFF ARE NOT BASED UPON THE QUANTITY OF WHOLESALE SERVICES PROVIDED BY LEVEL 2 CARRIERS, LEVEL 2 CARRIER WHOLESALE SERVICE PERFORMANCE DEFICIENCIES; OR THE ABILITY OF LEVEL 2 CARRIERS TO MEET THE PROPOSED STANDARDS

A. Only Three ILECs in Illinois Potentially Qualify as Level 2 Carriers.

Under Staff’s proposed Part 731 Rules, all Level 2 Carriers are subject to the standards contained in Subpart F. Level 2 Carriers are defined in Section 731.115(b) as:

LECs in the State of Illinois that provide Wholesale Service and satisfy each of the following requirements:

- 1) Have obligations pursuant to Section 251(c) of the Telecommunications Act, with less than 400,000 subscriber access lines in service;*
- 2) Do not have a Preexisting Plan;*
- 3) Do not have a Wholesale Service Quality Plan adopted by the Commission pursuant to Subpart E;*
- 4) Have not been directed pursuant to a Commission order to comply with all of the requirements of Subparts B, C, D and E pursuant to Section 731.635; and*
- 5) Do not have a currently effective Rural Exemption.*

Staff Ex. 7.0, Attachment 7.1 lines 404-422. There are only three Illinois ILECs that potentially fall within the requirements for Level 2 Carrier as defined in the Staff’s Proposed Rule. McClerren, Transcript at 504, lines 17-18. These carriers serve

approximately a total of 300,000 access lines in the State, which represents less than 5% of the access lines in Illinois. Harber, Citizens Ex. 1.0 at lines 257-260.

Citizens is the only potential Level 2 Carrier that provided evidence in this proceeding. Citizens serves approximately 110,000 access lines in 109 rural exchanges stretching from Northwestern corner of the State, down to western half of the State to Southern Illinois. Harber, Citizens Ex. 1.0 at lines 133 -137, Harber, Transcript at 142. The average number of lines in each Citizens exchange is approximately 1000 access lines. Citizens Ex.1.0 at 140 – 141. The largest exchanges served are Monmouth (approximately 6000 access lines), Jerseyville (approximately 6000 access lines) and Carlinville (approximately 5000 access lines). Citizens Ex. 1.0 at 142 – 144.

B. The Volume of Wholesale Service Activity for Potential Level 2 Carriers In Illinois is Minimal.

The volume of wholesale Collocation orders, Unbundled Loops, Resold Local Services and other wholesale services provisioned by potential Level 2 Carriers in Illinois is minimal. Citizens has had no requests for new Collocation in its Illinois central offices. Mason, Citizens Ex. 2.0 at lines 129 – 130. Citizens has provisioned only 261 Unbundled Local Loops to one CLEC in one exchange and provisioned a minimal number of Resold Local Services to CLECs in Illinois. Mason, Citizens Ex. 2.0 at lines 131 - 139. In terms of total access lines served, the combined unbundled loops and resold local service lines provisioned to date by Citizens represents .7% (approximately 700 out of 110,000) of the total access lines served in the state. Commission Staff has not undertaken any calculation in terms of the number of wholesale lines provisioned by these potential Level 2 Carriers. McClerren, Transcript at 505. There was no evidence presented in this proceeding to establish that any other potential Level 2 Carrier has had

any requests for Collocation, provisioned any Unbundled Loops or Resold Local Services in Illinois.

C. There is No Record Evidence of Wholesale Service Quality Deficiencies with Level 2 Carriers To Support Staff's Proposed Rules for Level 2 Carriers

Complaints of inadequate performance with respect to wholesale services simply has not involved mid-sized and smaller Level 2 Carriers in Illinois. There was no evidence presented in this proceeding to indicate that Staff or CLECs have identified any problems with the provisioning or the repair of wholesale services by Level 2 Carriers.

Ms. Cindy Jackson on behalf of the Staff, testified:

Q. Have you had any complaints or are you aware of any complaints regarding loss notifications involving Citizens Telecommunication Company of Illinois?

A. I'm not aware of any, no.

Q. Are you aware any complaints or concerns involving customer service records and Citizens Telecommunication Company of Illinois?

A. No, I'm not aware of any.

Jackson, Transcript at 332. Dr. M.K. Patrick testified at the hearing on behalf of Staff:

Q. Are you aware of any complaints or reported problems regarding CTC Illinois' wholesale performance?

A. I am not aware.

Patrick, Transcript at 382. Mr. Sam McClerren similarly testified on behalf of Staff:

Q. Mr. McClerren, are you aware of any complaints by any CLEC in Illinois that has actually ordered unbundled local loops from Citizens Telecommunications Company of Illinois?

A. No, I'm not.

McClerren, Transcript at 513. Even Jason Hendricks, the IRCA witness explained that he was not aware of any problems experienced by IRCA members associated with Citizens provisioning Unbundled Local Loops or other wholesale services.

Q. So you wouldn't have any information that would suggest that the IRCA Members have experienced any problems in the provisioning of unbundled local loops from Citizens?

A. At this point in time I'm not aware of any problems.

Hendricks, Transcript at 433. With respect to Collocation, IRCA witness Hendricks also indicated that he was "unaware" of whether any IRCA members had actually ordered Collocation or had Collocation in place. Hendricks, Transcript at 432. During the course of this proceeding, which commenced over one year ago, the Commission was not presented with any evidence of a systemic problem, or for that matter any problems, with respect to provisioning or repair deficiencies for wholesale services by Citizens or any midsize and smaller Level 2 Carriers.

D. Staff Has Proposed Extensive Wholesale Service Quality Standards For Level 2 Carriers Without Considering the OSS, Engineering Systems and Performance Capabilities of Level 2 Carriers

Staff has proposed extensive wholesale service requirements that would potentially apply to all Level 2 Carriers. Based on the absence of any identified wholesale service quality problems and the extremely low volume of wholesale service quality activity to date, Staff's focus on developing extensive rules for Level 2 Carriers is a textbook case of a solution in search of a problem. Moreover, because the Part 731 rules will represent absolute "minimum" standards that must be met to avoid penalties/credits being paid by the Level 2 Carrier, Staff's proposed standards are unreasonably high and

Level 2 Carriers are destined to fail when and if competitive activity expands in their territory.

As noted above, the volume of wholesale activity for potential Level 2 Carriers in Illinois has been insignificant up to this point. Consequently, Staff's proposed standards in the Part 731 rules were not based on previous problems or deficiencies CLECs encountered in ordering services from Level 2 Carriers. Because the standards for Level 2 Carriers are just one piece of the Part 731 rules addressed in the workshops hosted by Staff, Staff did not have the time or ability to review in any detail the operational support systems, engineering systems and performance capabilities potential Level 2 Carriers had with respect to provisioning and repairing wholesales services. Staff's proposed rules were clearly not based on the performance history or capabilities of Citizens. By way of analogy, if the same process was used for Level 1 carriers, the standards included in the Ameritech and Verizon wholesale service quality plans, would have been established before AT&T, WorldCom and others had ordered any wholesale services from Ameritech/Verizon, before any complaints regarding the wholesale service quality issues had been made and without any evaluation of Ameritech/Verizon's OSS, engineering systems or performance capabilities.

E. Staff Has Proposed Wholesale Service Quality Standards For Level 2 Carriers That Citizens Can Not Meet

The evidence shows that Staff's proposed rules include standards which Citizens can not achieve. Citizens has provided evidence that it can not comply with the standards proposed by Staff. Mr. Ken Mason, Citizens Manager for Interconnection, testified that Citizens' provisioning organization has looked at its processes and capability to deliver FOCs and complete provisioning and repairs associated with Unbundled Local Loops,

Interconnection Trunks and Resold Local Lines and determined that Citizens can not meet the performance measures and standards set by Staff. Citizens Ex. 2.0 at lines 722 – 727.

II. STAFF’S PROPOSED RULES FOR LEVEL 2 CARRIERS REQUIRE SUBSTANTIAL MODIFICATION.

In June 2001, the Illinois General Assembly passed H.B. 2900 and specifically Section 13-712, which among other things directed the Illinois Commerce Commission to establish various service quality rules. The legislative summary accompanying H.B. 2900 describes this section of the bill as establishing “standards for basic local service.” Section 13-712(a) which is entitled “Basic local exchange service quality; customer credits” provides:

*It is the intent of the General Assembly that every telecommunications carrier meet minimum service quality standards **in providing basic local exchange service**¹ on a non-discriminatory basis to all classes of customer.*

220 ILCS 5/13 – 712(g) In the same section, Section 13-712(g), the General Assembly directed the Commission to develop wholesale service quality rules. That section provides:

The Commission shall establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules.

220 ILCS 5/13 – 712(g)

¹ “Basic local exchange service” is defined in 220 ILCS 5/13-712(b), as follows:

“Basic local exchange service” means residential and business lines used for local exchange telecommunications service as defined in Section 13 204 of the Public Utilities Act, excluding:

- a) services that employ advanced telecommunications capability as defined in Section 706(c)(1) of the federal Telecommunications Act of 1996;
- b) vertical services;
- c) company official lines; and
- d) records work only.

As the Commission proceeds with this docket, it is important to recognize that wholesale service quality performance measures and issues for carriers other than Ameritech and Verizon are a relatively new phenomenon. Most carriers had no obligation to provide wholesale services prior to the 1996 Federal Telecommunications Act and as noted above, Level 2 Carriers are still experiencing very little if any wholesale service activity. For this reason, the wholesale service quality performance measures initially created for Level 2 Carriers as a result of Section 13-712(g) should include a minimal number of wholesale services, and standards and benchmarks that are reasonable and achievable for mid-sized and small LECs.

A. Revised Definitions

Staff has proposed general definitions in Section 731.105. Citizens supports most of Staff's definitions. However, the following definitions included in Staff's proposed rules require changes and/or deletions:

Carrier to Carrier Wholesale Service Quality (Staff Ex. 7, Staff Attachment 7.1 Lines 127 – 13)

Wholesale Service (Staff Ex. 7, Staff Attachment 7.1 Lines 272 – 274)

Unbundled Local Loops (Staff Ex. 7, Staff Attachment 7.1 Lines 255 - 257)

The proposed wholesale service quality rules included in Part 731 should only address services that are used to provide “basic local exchange service.” The legislature history of H.B. 2900, as well as the language of the statute, show that General Assembly only intended to establish wholesale service quality rules for “basic local exchange service.” “Basic local exchange service” is defined in 220 ILCS 5/13-712(b) and explicitly excludes “services that employ advanced telecommunications capability.”

Citizens proposed that the following revised definition to reflect these concepts:

“Carrier to carrier wholesale service quality” means the level of quality of telecommunications services, measured pursuant to the Standards and Measures adopted in this Part, that one telecommunications carrier sells or provides to another telecommunications carrier pursuant to an interconnection agreement for the latter carrier’s use in providing basic local exchange service to end users. (Citizens Ex. 1.0 Attachment 1.1 Lines 121-126)

Citizens also recommended changing the definition of “Wholesale Services” as follows:

“Wholesale Services” means any telecommunications service that one telecommunications carrier sells or provides to another telecommunications carrier pursuant to an interconnection agreement for use in providing basic local exchange service to end users. (Citizens Ex. 1.0 Attachment 1.1 Lines 267-270)

Citizens also recommended revising the definition of “Unbundled Local Loop” as follows:

“Unbundled Local Loop” means the physical connection from the end user’s premise to the carrier’s point of presence, excluding switching or ports, provided by one carrier to another carrier. For purposes of this Code Part 731, Unbundled Local Loop is limited to analog loops used to provide “basic local exchange services” as defined in 220 ILCS 5/13-712(b). (Citizens Ex. 1.0 Attachment 1.1 Lines 248-252)

Limiting the application of the Part 731 rules to Unbundled Local Loops used for the provisioning “basic local exchange service” is consistent with the General Assembly’s directive that the Commission establish service quality standards associated with “basic local exchange service” in Section 13-712.

B. The Scope of Wholesale Services Addressed For Level 2 Carriers Should be Reduced.

In Section 731.600 Staff has proposed that Level 2 Carriers be subject to wholesale service quality standards for Unbundled Local Loops; Interconnection Trunks; Resold Local Services; Collocation; Loss Notification and Customer Service Records. Although not specified in Section 731.600 Staff has also proposed that Level 2 Carriers

be subject to wholesale service quality measures for de-conditioning loops and provisioning loops used for line sharing/splitting. Given the limited level of competitive activity currently existing for Level 2 Carriers, this list of wholesale services covered by Part 731 is too broad and extensive for purposes of setting rules of general applicability for Level 2 Carriers. The Commission should delete Collocation, Loss Notifications and Customer Service Records standards and “Loops” used for advanced services from the scope of the Wholesale Services covered in the rules of general applicability for Level 2 Carriers. The deletion of these services is reflected in Citizens’ proposed section 731.600 (Citizens Ex. 1, Attachment 1.1 Lines 960-975) and section 731.610 (Citizens Ex. 1, Attachment 1.1 Lines 1154-1183).

1. Collocation

Staff has proposed that FOC (Firm Order Confirmation), provisioning and repair standards be set for Level 2 Carriers providing “Collocation.” However, there was no evidence presented in this proceeding that any CLEC in Illinois has ever had an issue or problem in obtaining Collocation provisioning from a Level 2 Carrier. Similarly, there was no evidence regarding any complaints associated with Collocation repairs by Level 2 Carriers being untimely.

The only evidence presented regarding potential Level 2 Carriers and Collocation was that Citizens has been operating in Illinois since November 2000 and in the last 18 months, Citizens has not had any requests for new Collocation in its central offices.

Mason, Citizens Ex. 2.0 at lines 130 –131. Staff witness Sam McClerren also testified:

Q. Are you aware of any complaints by requesting carriers or CLECs in Illinois regarding Collocation services provided by Citizens Illinois?

A. No.

McClerren, Transcript at 507 –508. Consequently, there is no record of any problems, delays or other issues associated with completing Collocation that need to be addressed or fixed by the Commission’s wholesale carrier-to-carrier standards.

In addition, Staff’s proposed Collocation rules included in 731.605 and 731.610 are inconsistent with the “Collocation” standards and requirements established by the FCC in FCC Docket CC 98-147, Order on Reconsideration and Second Further Notice of Proposed Rule (Aug. 9, 2000) and Fifth Report and Order (July 12, 2001). These standards are included in 47 CFR 51.323 “Standards for physical Collocation and virtual Collocation.”

First, Staff’s proposed rule for Collocation requires a Level 2 Carrier to provide a FOC for Collocation within 10 days. Under Staff’s proposed rule, FOC is defined as:

The document or electronic record by which a Provisioning Carrier notifies a requesting carrier that the service order has been received and what due date has been assigned.

In contrast, the FCC Collocation rules require a different response with respect to processing Collocation applications. 47 CFR 51.323(l)(1) provides:

Within ten days after receiving an application for physical Collocation an incumbent LEC must inform the requesting carrier whether the application meets each of the incumbent LEC’s established Collocation standards.

Staff’s proposal for an FOC for Collocation is inconsistent with 47 CFR 51.323(l)(1) since Staff’s rule does not refer to Collocation standards established by the incumbent LEC. Under Staff’s proposal, a Level 2 Carrier will have no choice but to simply send the Collocation applicant a “Reject Notice” within 10 days if the application is incomplete or fails to meet established Collocation standards.

Similarly, the FCC's rules address numerous technical issues associated with the availability and provisioning of Collocation, including when and how Collocation is to be provided. With respect to a provisioning timeframe, 47 CFR 51.323(l)(2) provides:

Except as stated in paragraphs (l)(3) and (l)(4) of this section and incumbent LEC must complete provisioning of a requested physical Collocation arrangement within 90 days after receiving an application that meets the incumbent LEC's established Collocation application standards.

Parts 51.323 (l)(3) and (l)(4) then provide exceptions to the 90 day provisioning standard based upon whether the ILEC receives an affirmative notification to proceed from the CLEC after the CLEC has received a price quote for the Collocation. Staff's ninety (90) day standard for provisioning Collocation in Rule 731.605(b) is again inconsistent with the FCC's rules which provide specific requirements and exceptions for Collocation provisioning. As drafted, Staff's proposed rule 731.605(b) would require a Level 2 Carrier to complete the provisioning requirements for Collocation, regardless of whether a CLEC has affirmatively responded to a price quote for Collocation. In other words, Level 2 Carriers will be confronted with a precarious dilemma: 1) do not proceed with the collocation provisioning because the CLEC requesting carrier has not complied with the FCC requirements and confirmed that it wants to proceed with the collocation following delivery of the price quote and thereby risk being subject to the per day credit remedies included in Staff's proposed rule or 2) proceed with the collocation to meet the 90 day provisioning deadline and thereby risk not being paid by the CLEC since it has not affirmatively responded to the price quote.

In addition, Staff's proposed repair and maintenance standards for Collocation by Level 2 Carriers are ambiguous and incomplete. In a physical Collocation, the CLEC will provide the equipment used in Collocation. Mason, Citizens Ex. 2.0 lines 429 – 430.

The CLEC will have responsibility for maintaining that equipment. Id. at lines 432 –433. Staff’s proposed rule 731.605(c) regarding the repair of Collocation is ambiguous since it is not clear what Collocation equipment the Level 2 Carrier is responsible for repairing within 8 hours. Moreover, the ILEC will have no ability to repair the CLEC’s equipment. In addition, with respect to virtual Collocation, in which the ILEC provides the Collocation equipment, the existing FCC rules provide that the ILEC shall maintain and repair collocated equipment:

“within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the incumbent LEC itself.” 47 CFR 51.323(e).

Staff’s proposed rule for completing repairs in eight (8) hours is unnecessary and potentially inconsistent with the FCC rules and will potentially give Level 2 Carriers more time to complete repairs than the FCC standards. Because Staff has ignored these differences and the potential difficulties the inconsistent Commission rules and FCC rules will create for both Level 2 Carriers and collocation applicants, the Commission should eliminate collocation standards from the Level 2 Carrier requirements in Part 731.

2. Loss Notifications and Customer Service Records

Under Staff’s proposed rules, Level 2 Carriers are required to provide Loss Notifications and Customer Service Records “within 24 hours.” Staff Ex. 7.0, Attachment 7.1 lines 954 - 961 (Sections 731.605(d) and (e)). Neither standard, however, provides any specificity with respect to what “event” triggers or starts the 24-hour period for purposes of evaluating compliance with Staff’s proposed rule. In the hearing Staff witness Jackson indicated that with respect to the timing of when Loss Notifications should be provided, the Level 2 Carrier could implement their own process for triggering

the Loss Notification. Jackson, Transcript at 345-346. Even with this explanation, however, the proposed rule is ambiguous and absent additional clarification, Level 2 Carriers will be subject to different interpretations by CLECs, and possibly disputes, as to when and how the Loss Notification and Customer Service Records standards apply.

In addition, Staff's proposed definition of "Customer Service Record is incomplete. Staff has defined Customer Service Records, as follows:

"Customer Service Record" or "CSR" means account information that a providing carrier maintains about an end user and includes, but is not limited to the billing name, service address, and billing address of the end user. A CSR shall not be requested until after the requesting carrier is in receipt of a signed letter of authorization or third party verification pursuant to Sections 13-902 and 13-903 of the PUA.

Staff Ex. 7.0, Attachment 7.1 lines 143 –147. In the hearing, Staff witness Cindy Jackson agreed that the Customer Service Record definition is potentially ambiguous and in need of clarification.

Q. Is it your opinion that additional information above and beyond what's specified here would also be included within the scope of a customer service record?

A. Yes.

Q. Would that potentially include billing and credit information associated with a customer's account?

A. That's not what staff had envisioned. Staff had envisioned what might be added as the services and the features that the customer currently has so that if a carrier is to sign them up for service, they can make a comparison, not automatically assign those services and features but say something like, I see that you've had in the past -- you've had maybe caller ID, three-way calling, are those still plans that you want to condition with.

Q. Is it your opinion that this definition as proposed by staff would also cover non-regulated services such as dial-up Internet service or other non-regulated services?

A. I didn't really contemplate that.

Q. Okay. Would you agree that this definition is not clear with respect to at least those two issues that I –

A. Yes, I would agree to that.

Jackson, Transcript at 322-23.

There was no evidence presented in this proceeding that would suggest the Commission needs to establish standards for Level 2 Carriers associated with Customer Service Records or Loss Notifications. The standards proposed by Staff are incomplete and ambiguous. Standards for Customer Service Records and Loss Notifications would more appropriately be established on a case-by-case basis with specific Level 2 Carriers and based on the carriers operational support systems and the needs of interested CLECs. Accordingly, the Commission should not include standards for Customer Service Records and Loss Notification in Section 731.605 at this time.

3. Loops Used to Provide Advanced Services.

Staff's proposed Section 731.605 contains FOC, provisioning and repair standards for "Unbundled Local Loops" without differentiating between analog, digital and other loop types. Staff has also proposed an 8-day standard for conditioning loops when a digitally capable loop contains bridged taps or load coils and additional work activities associated with conditioning the loop must be performed. Staff Ex. 7.0 Attachment 7.1 lines 925-933. Staff witness McClerren explained Staff's intent with respect to the provisioning of Unbundled Local Loops that require line conditioning so the Unbundled Local Loop can be used to provide advanced services:

Q. With respect to unbundled local loops that may be used to provide advance services like DSL, as I understand staff's proposal, a Level 2

Carrier would have potentially up to eight days to condition the loop, i.e., loop (sic) load coils, and ultimately provision that loop to the requested carrier?

A. That is correct.

Q. And if the Level 2 Carrier failed to complete the conditioning and provisioned a deconditioned loop within eight days, they would be subject to the credits or remedies included in staff's proposed rule?

A. That's correct.

McClerren, Transcript at 513-514.

Citizens has been operating in Illinois since November 2000 and in the last 18 months, Citizens has not had any requests for digital loops or line sharing/splitting in its central offices. Harber, Citizens Ex. 1.0 at lines 537-539. There have not been any problems, delays or other issues associated with digital capable loops or line sharing/splitting (including de-conditioning loops) associated with wholesale service provisioning or repair. Id. At lines 540-542. IRCA witness, Jason Hendricks, acknowledged that he was not aware of any issues with respect with provisioning loops for advanced services:

Q. So to your knowledge the IRCA members have not experienced any problems or difficulties in purchasing digitally capable loops from Citizens?

A. I'm unaware if they have had any problems or not.

Hendricks, Transcript at 450. The suggestion that some problems may develop in the future for Level 2 Carriers associated with is purely speculative and places the Commission in the position of arbitrarily establishing standards as a solution before a problem has even been identified.

Citizens' provisioning group is unable to provision unbundled loops used to provided advanced services in 8 business days. Most Citizens central offices are not staffed, are in small rural areas and in some instances technicians will need to travel several miles to complete the central office lift and lay work necessary to provision an analog loop. Mason, Citizens Ex. 2.0 lines 824-826.

There is no reasoned basis to establish an 8 day standard for deconditioning a loop to be used to provide "advanced services." There was no evidence that Staff considered how much time ILECs require to condition an unbundled loop to provide DSL services to retail customers. This would clearly be a reasonable retail – wholesale parity comparison, however, Staff does not appear to have considered this fact. Similarly, there was no evidence presented that Staff considered what if any standards for deconditioning loops are applied to Ameritech and Verizon as part of their existing wholesale service quality plans.

Addressing Loops that will be used to provide advanced services in this proceeding is also inconsistent with the rulemaking authority provided in 220 ILCS 5/13-712. The General Assembly directed the Commission to establish service quality standards associated with "basic local exchange service" in Section 712. The General Assembly did not, however, set a 5-day installation timeframe for installing "advanced services" or a 24-hour timeframe for repairing advanced services. Nor did the General Assembly require carriers to provide credits to retail customers associated with delays in provisioning or repairing "advanced services" like DSL. The end result of Staff's proposal to include "advanced services" within the scope of the Part 731 rules is discriminatory and will result in inconsistent regulatory treatment of Level 2 Carriers and

CLECs. A CLEC or requesting carrier will have no obligation or requirement to provision or repair a line used for DSL or other advanced services under the Commission's existing rules. However, a Level 2 Carrier may be required to provision the loop used to provide the advanced service within eight (8) days or be subject to credits/penalties under Staff Section 731.605(b).

The proposed performance standards for Level 2 Carriers should only apply to "analog" local loops provisioned to provide basic local exchange services. Citizens has recommended the following bullet be added to the provisioning standard in Section 731.605(b):

The provisioning intervals for Unbundled Local Loops only apply to analog loops and do not apply when a loop must be conditioned, to remove bridge taps or load coils.

Citizens Ex. 1.0, Attachment 1.1 lines 1073-1075. In addition, the 8-day standard for conditioning and provisioning a loop used to provide "advanced services" should be eliminated from Section 731.605(b).

C. The Commission Should Establish Minimum Quality Thresholds For Wholesale Services Before Service Standards and Credits Apply.

Citizens is the third largest ILEC in the state and has experienced very little interconnection activity in its Illinois exchanges since it acquired the exchanges from Verizon in 2000. As noted above, Citizens has installed no new Collocations and is providing approximately 261 unbundled loops (most of which were carried over from Verizon when Citizens acquired the exchanges) and 360 resold lines. Mason, Citizens Ex. 2.0 at lines 130-132. CLEC order activity in terms of new orders has been minimal. In addition, there was no evidence presented in this proceeding to suggest that the volume

of wholesale activity with potential Level 2 Carriers is going to increase significantly in the near future. When asked to provide the forecasted number of Resold Local Services, Unbundled Local Loops and Interconnection trunks, the nine CLEC members of IRCA anticipate purchasing from Citizens before the end of December 2003, the IRCA stated:

“The IRCA does not have information responsive . . . “.

Citizens Cross Exhibit 2.

If interested CLECs can not estimate the wholesale services they anticipate ordering from a potential Level 2 Carrier and Level 2 Carriers have had no experience provisioning wholesale services, how will the carrier be prepared to comply with the proposed wholesale service standards included in Part 731? It is impractical to dedicate human and other resources that can “stand ready” to provision wholesale service requests when up to now wholesale service requests have been non-existent or at best sporadic. Carriers should not be expected to meet rigorous performance standards unless some threshold of wholesale activity occurs.

Accordingly, the remedy and reporting requirements in Sections 731.605, 731.610 and 731.620 should not apply if Unbundled Local Loop, Interconnection Trunk and Resold Local Services resale quantity thresholds are not met. Citizens proposed the following wholesale service thresholds in its revisions to Staff’s rules:

Unbundled Local Loops, (threshold, 25 orders per quarter);

Interconnection Trunks, (threshold, 10 orders per quarter);

Resold Local Services, (threshold, 25 orders per quarter).

Citizens Ex. 1.0, Attachment 1.1 Lines 1000-1010.

If the Wholesale Carrier's activity for certain wholesale services exceeds the identified threshold the Level 2 Carrier would be subject to the standards in Section 731.610 and would be required to provide the remedies in 731.620 for those wholesale services. If however, these wholesale activity levels are not achieved during the preceding quarter, the Level 2 Carrier would not be subject to the standards and credits. Establishing a threshold gives the Level 2 Carrier an opportunity to gear up and dedicate the resources necessary to meeting the Part 731 standards once it actually receives orders for wholesale services. Citizens urges the Commission to include some reasonable wholesale service quantity threshold before the compliance credit and reporting requirements in Part 731 apply.

D. Staff's Proposed Remedies Requiring Level 2 Carriers to Provide Credits if They Do Not Achieve 100% Performance Is Arbitrary and Violates Section 712(g)

Under Staff's proposed rules a Level 2 Carrier is required to meet the performance standards proposed by Staff 100% of the time or otherwise pay customer remedies or credits. In other words, the Level 2 Carrier would pay a credit to a CLEC if it missed even a single provisioning or repair measure. This point is exemplified by the testimony of Staff witness Patrick. Dr. Patrick explained:

Q. Under staff's proposed 731 rules, Level 2 Carriers are required to meet staff's proposed rules 100 percent of the time to be in compliance with the standards?

A. Yes.

Patrick, Transcript at 368. Dr. Patrick confirmed that even with a single miss with respect to provisioning or repair, the Level 2 Carrier would be deemed to be out of compliance and failing to meet the Commission's standard:

Q. Would you agree that under staff's proposed rules, if a carrier received 100 orders they provision 99 on time, they would be deemed to have failed to meet the staff's proposed standards and would be out of compliance with the Part 731 rules?

A. For simplicity of calculation, and simplicity of measurement, that is the case that one single one would in fact fail.

Patrick, Transcript at 370. Under Staff's proposed rules performance that does not meet the benchmark standard 100% of the time is considered to be failing or substandard.

Notwithstanding their best efforts, Level 2 Carriers will always fail to provision or repair some lines within the specified standards. Mason, Citizens Ex. 2.0 at lines 634-636. Citizens' witness Ken Mason provided evidence that Citizens can not satisfy the Staff's proposed standards. Id. at lines 722-727. There is no evidence in the record that would even remotely suggest that any potential Level 2 Carrier in Illinois can achieve 100% compliance with the Staff's proposed wholesale service standards. Neither the Ameritech or Verizon wholesale service quality plans are based on 100% compliance. Id. at 641-643. It is arbitrary and unreasonable to subject Level 2 Carriers to paying customer remedies if they do not achieve 100% of the time.

In creating the remedies for Level 2 Carriers based on achieving 100% compliance, Staff failed to undertake any analysis of the dollar amount of the potential remedies to be paid by Level 2 Carriers. Dr. Patrick, on behalf of Staff, testified:

Q. I understand. Dr. Patrick, do you have any estimate of what the anticipated amount of remedies Level 2 Carriers are going to be required to pay under staff's proposed Part 731 rules?

A. Well, it would require knowledge of the volume of service that each Level 2 Carrier would have, and also require knowledge in advance of how many standards were missed and how many standards were 22 met. So I don't believe it's possible to make that calculation.

Patrick, Transcript at 378-79. Similarly, Staff witness McClerren explained:

Q. Has staff undertaken any analysis to try to estimate the total level of credits that Level 2 Carriers may be subject to under the proposed -- under the standards proposed by staff.

A. Particular credit amounts, we have none, no.

McClerren, Transcript at 505. Without some quantification of the potential remedies Level 2 Carriers will be exposed to as a result of Staff's proposed standard, there is no way of ascertaining whether Level 2 Carriers will pay a higher percentage of the revenues derived from wholesale services than Level 1 carriers like Ameritech currently pay. The Illinois General Assembly could not have intended carriers with a much smaller volume of competitive wholesale activity to pay a higher percentage of remedies under the proposed Part 731 rules.

It is also important to note that both the existing Ameritech and Verizon wholesale service quality plans contain standards that are based in part on parity with their retail performance. Patrick, Transcript at 372. Under a retail parity standard, a carrier does not "Fail" to meet the standard unless their wholesale performance falls below their retail service performance. In other words, for Level 1 Carriers, a single miss does automatically result in remedies and penalties. If Level 1 Carriers, the carriers that have more significant volumes of wholesale activity, are not expected to meet the standards included in Part 731, 100% of the time, how can Level 2 Carriers, with less experience provisioning wholesale services, be expected to do so. The fact that Staff has no idea what the potential exposure for Level 2 Carriers will be under its proposed rules and that Level 1 carriers are given some leeway (less than perfect performance) further highlights the arbitrary and unreasonable nature of Staff's proposal that Level 2 Carriers pay remedies for every single performance miss.

Finally, there is no legislative authority to support Staff's recommendation that a Level 2 Carrier pay credits for every wholesale service installation or repair that is not completed within the Staff's proposed standards. In Section 712(g) the General Assembly directed the Commission to "establish remedies to ensure enforcement of the [carrier to carrier] rules." This is quite different than the legislative language used with respect to retail service quality performance and codified in Section 712(b)-(e). For example, Section 13-712(c) provides: "The Commission shall promulgate service quality rules for basic local exchange service, which may include fines, penalties, customer credits, and other enforcement mechanisms." 220 ILCS 5/13-712(d). In Section 712(e), the General Assembly was explicit that credits were to be provided to customers when the installation or repair of basic local exchange services were not completed within the legislatively mandated timeframes. The General Assembly did not require or even reference "credits" in directing the Commission to develop wholesale carrier to carrier rules in Section 712(g).

The Legislature instead directed the Commission to establish "remedies" to "ensure enforcement of the rules." As noted above, Staff's proposal is that Level 2 Carriers pay credits for every single provisioning or repair order that is not completed within the timeframes specified in the rules. As Citizens' witness testified, it is technically impossible for Citizens, or any carrier for that matter, to have perfect compliance and complete every provisioning or repair order on time. Mason, Citizens Ex. 2.0 at lines 634-636. Notwithstanding even the most extraordinary efforts, there are likely to be some misses. Given this undisputed fact, Staff's proposed credits do not establish an "enforcement" mechanism. Level 2 Carriers will be in violation of the

standards and out of compliance regardless of their efforts. Staff's proposed credits resulting from anything less than 100% compliance instead create a "compensation" mechanism which is inconsistent with the language in 712(g) that standards be set and remedies be established to "ensure enforcement of the rules."

The General Assembly also made it clear that CLECs providing retail service to a customer would be "reimbursed" for any credit provided to an end user customer if the violation of the service quality standard was caused by the wholesale carrier. 220 ILCS 5/13-712(d)(4). In this situation, the General Assembly found it appropriate from a public policy perspective to require wholesale carriers to credit their wholesale customers. The General Assembly did not include a similar requirement in Section 712(g). CLECs will be reimbursed for any credits they provide to their end-user customers under the Part 732 rules. The end user retail customer will be compensated as required in 220 ILCS 5/13-712(e) and no additional compensation should be required to be paid to the wholesale customer. For example, under Staff's proposal a Level 2 Carrier that was unable to restore a Resold Local Service for 50 hours (outside the 24 hour window included in 220 ILCS 5/13-712(e)), would be required to make two payments to the wholesale customer. First, the Level 2 would reimburse the wholesale CLEC customer the 33% credit of the monthly recurring charge provided to the end user customer as specified in 220 ILCS 5/13-712(e). Second, under Staff's proposal, the Level 2 Carrier would credit the wholesale customer an addition credit of 20% of the monthly recurring charge associated with the Resold Local Service. The fact that CLECs will be reimbursed for the payments/credits they make to their end-user customer's also undermines Staff's position that a CLEC should receive a credit from Level 2 Carriers

100% of the time for every single miss of the wholesale service standards included in the Part 731 rules.

In no other service quality context, other than the Part 732 rules where it was expressly mandated by the General Assembly, has the Commission required a service provider to provide a customer a credit for every single service miss. The Part 730 retail service quality rules that have been in place for years do not contain such draconian requirements. The proposed Part 730 rules instead contain a 90% standard for provisioning and a 95% standard for repairs. Similar provisioning and repair benchmarks for Unbundled Local Loops, Interconnection Trunks and Resold Local Services should be incorporated into the Part 731 Rule. Citizens has recommended that the following language and terms be included in Section 731.605(a)-(d) of the proposed Part 731 Rule:

- a) *Firm Order Confirmations - Level 2 Carrier shall provide FOCs or reject notices for Wholesale Services within the following timeframes, as measured from the time of receipt of an accurate and complete service request to the return of a FOC or reject notice:*
 - 1) *Unbundled Local Loops - 90% within 24 hours for orders placed using available OSS; 90% within 48 hours for other orders.*
 - 2) *Interconnection Trunks - 90% within 5 business days*
 - 3) *Resold Local Services - 90% within 24 hours for orders placed using available OSS; 90% within 48 hours for other orders.*
- b) *Provisioning - Level 2 Carriers shall provision wholesale services within the following timeframes, as measured from the time of receipt of a complete and accurate service request to completion of the requested service:*
 - 1) *Unbundled Local Loops - 90% within 5 business days*
 - 2) *Interconnection Trunks - 90% within 30 business days*

3) Resold Local Services - 90% within 10 business days

The provisioning intervals for Unbundled Local Loops only apply to analog loops and will not apply when a loop must be conditioned to remove bridge taps and load coils.

c) Maintenance and Repair - Level 2 Carriers shall clear Wholesale Out of Service trouble reports within the following intervals, as measured from the time of receipt of an accurate and complete trouble report to the time the trouble report is cleared:

- 1) Unbundled Local Loops - 95% within 24 hours*
- 2) Interconnection Trunks - 95% within 8 hours*
- 3) Resold Local Services - 95% within 24 hours*

d) The measures in sections a), b) and c) above shall be evaluated based on the total wholesale activity for the Level 2 Carrier during the calendar quarter.

Citizens Exhibit 1.0, Attachment 1.1 Lines 1032-1113. If a Level 2 Carrier achieves the 90% provisioning standard or the 95% maintenance and repair, the carrier should be deemed to be in compliance with the Commission's rules and not be subject to the remedies/credits in Section 731.610.

In addition to establishing 90% and 95% compliance standards, the Commission should reduce Level 2 Carriers potential financial exposure from penalty/credits by establishing a penalty cap associated with each particular service order. In Staff's proposed Section 731.610, Level 2 Carriers are required to pay a credit equal to a percentage of the monthly recurring charge for the wholesale service for each additional "business day" after the standard provisioning/repair deadline. Staff Ex. 7.0, Attachment 7.1 lines 1005-1020. In some limited circumstances, however, a Level 2 Carrier may experience extended delays in provisioning an order, especially for Unbundled Local Loops or repairing an Unbundled Local Loop, Interconnection Trunks, and Resold Local Services. Mason, Citizens Ex 2.0 at 957-960. Although the magnitude of any

payment/credits should provide an incentive to comply with the standards, the credit/remedy should not be so onerous that it will eclipse the entire cost associated with the wholesale service (e.g. local loop) for several months or otherwise create a windfall for the CLEC. Citizens has recommended that the maximum credit payable on any particular order be equal to 10 times the monthly recurring charge for the service subject to the delay. This cap would be reflected in Section 731.610 Remedies as follows:

- b) For Provisioning Failures - Level 2 Carriers shall provide credits equal to 20% of the monthly recurring charge per business day for the services covered in Section 731.605(b) of this Part. The maximum credit on any one provisioning failure is 10 times the monthly recurring charge for the service subject to the delay.
- c) For Maintenance and Repair Failures - Level 2 Carriers shall provide credits equal to 20% of the monthly recurring charge per day for the services covered in Sections 731.605(c)(1) and 731.605(c)(3) of this Part and 10% of the monthly recurring charge per every 8 hours for the services covered in Sections 731.605(c)(2) and 731.605(c)(4) of this Part. The maximum credit on any one-repair failure is 10 times the monthly recurring charge for the service subject to the delay.

Citizens Ex. 1.0 Attachment 1.1 lines 1163-1175.

E. The Commission Should Add Additional Exclusions to Section 731.605(e) Associated With the Negligence or Faulty Equipment of End User Customers

In Section 731.605(e)(1)-(7), Staff has proposed seven fact-specific situations that may excuse a Level 2 Carrier from failing to meet the applicable FOC, provisioning or repair/maintenance standards included in 731.605(a), (b) and (c). Staff Ex. 7.0, Attachment 7.1 at lines 963-987. The seven exclusions included by Staff are based in part of similar exclusions that the Illinois General Assembly identified 220 ILCS 5/13-712(e)(6). For example, if a Level 2 Carrier is unable to provision an Unbundled Local Loop in 5 days as a result of “wholesale customer missing an appointment” the failure to

meet the 5 day standard will not be deemed a violation and the Level 2 Carrier would not be subject to the remedies included in Section 731.610 of the Staff's proposed Rules. See Staff's Proposed Section 731.605(e)(4). Similarly, if a Level 2 Carrier could not complete a repair of an Interconnection Trunk within the Staff's proposed 8-hour standard as a result of a "wholesale emergency situation", the Level 2 Carrier would not be deemed to be in violation of the standard or subject to remedies. See Staff's Proposed Section 731.605(e)(3).

The seven exclusions proposed by Staff only focus on delays or problems caused by the wholesale customer: 731.605(e)(1) covers delays as a result of a negligent or willful act on the part of the "wholesale customer"; 731.605(e)(2) covers delays as a result of a malfunction of equipment owned or operated by the "wholesale customer"; and 731.605(e)(4) and (5) cover delays as a result of the "wholesale customer" missing an appointment or requesting a change to the scheduled appointment. The first two exclusions proposed by Staff Sections 731.605(e)(1) and 731.605(e)(2), should be expanded to include two additional fact-specific situations associated with the "end-user retail customer."

A Level 2 Carrier should not be deemed to violate the standards in Section 731.605(a)-(c) if the delay in provisioning or repair was the result of a negligent or willful act on the part of the end-user retail customer or the result of a malfunction of equipment owned or operated by the end-user retail customer. These "end-user" customer-related exemptions exist in the existing Part 732 rules. For example, under Part 732, if a end-user retail customer negligently or willfully cuts their telephone line while planting a tree in their yard, the carrier providing service to the end-user customer would

not be subject to the 24 hour OSS service restoration standards and credits in the Part 732 and Part 730 rules. See McClerren, Transcript at 523-524.

It would be arbitrary and unreasonable to require the Level 2 Carrier to pay the wholesale customer credits/penalties for failing to install or repair wholesale service caused by an end-user's negligence or equipment when the wholesale customer had no obligation to provide the end user a credit or remedy. The exemption available to the wholesale customer should "pass through" to the Level 2 Carrier providing the facilities used to deliver service to that customer. During the hearing, Staff witness Sam McClerren agreed that it seemed appropriate to excuse a Level 2 Carrier from performance failures and resulting credits to a CLEC if the CLEC was exempted from paying a credit under the Part 732 rules as a result of the end user's negligence or equipment failures:

- A. As long as the Level 2 Carrier -- I sorry. As long as the CLEC is not responsible for credit to the end user, I have no problem saying that the Level 2 Carrier would not be responsible for credit to the CLEC, but I'm thinking out loud, quite honestly.**
- Q. I don't want to belabor the point, but with respect to F2, I would like to have you take a minute and give some thought to a similar example. The language proposed by staff says, and there's an exception in terms of the Level 2 Carrier paying the CLEC if the provisioning failure or the repair failure is as a results of a malfunction of equipment owned or operated by the wholesale customer.**
- Q. Thinking of a similar scenario in which it's the end-user's equipment, small business that's out there, their telephone equipment malfunctions, it's their equipment, it causes an out-of-service condition, the Level 2 Carrier doesn't get out there to repair it for 24 hours. It's really a similar scenario to F1, but would your thoughts be the same?**
- A. The same reasoning would apply, yes, if it's on the other side of the network interface device, the same cascading fault -- logic would apply.**

Q. So, to the extent that CLEC is not required to pay a credit to the end-user customer, because there's some exemption, that exemption should, in effect, flow through to the Level 2 customer?

A. That seems appropriate.

McClarren, Transcript at 524-525.

To address this concern, the Staff's proposed language in Part 731.605(e)(1) and (2) should be revised to include references to "end user retail customers." Citizens has proposed the following language in Part 731.605(3):

The standards set forth in this section do not apply if . . . the violation of the service quality standard occurs:

1) as a result of a negligent or willful act on the part of the wholesale customer or the end-user retail customer;

2) as a result of a malfunction of equipment owned or operated by the wholesale customer or the end-user retail customer;

Citizens Attachment 1.1 Lines 1122-1128. Since Staff has agreed that it would be reasonable to allow these "end-user retail customer" exemptions to flow through, the Commission should adopt Citizens' recommended changes to Part 731.605(e)(1) and (2).

III. THE COMMISSION SHOULD NOT IMPOSE "ONE SIZE FITS ALL" WHOLESALE SERVICE QUALITY STANDARDS ON LEVEL 2 CARRIERS

In Section 13-712(g), the Illinois legislature directed the Commission to develop wholesale service quality rules. That section provides:

The Commission shall establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules.

Based on this legislative mandate, the Commission is to establish and implement some form of wholesale service quality rules. Unlike the language in Section 712(c) which directs the Commission to establish retail service quality rules which “each telecommunications carrier” must comply with, Section 13-712(g) does not require the Commission to establish wholesale service quality standards that apply to all telecommunications carriers in the state. Nor does this language require the Commission to establish the wholesale standards within any specific timeframe. Based on this statutory language, the Commission is free to move forward with implementing wholesale carrier to carrier service quality rules for Level 1 Carriers today and to defer establishing standards for other carriers until company specific wholesale service quality plans can be filed, reviewed and approved by the Commission.

A. The Commission Has Allowed Level 1 ILECs to Develop Their Own Wholesale Service Plans in a Collaborative Effort.

The vast majority of competitive and wholesale activity in Illinois is occurring in the service areas of Ameritech and Verizon in Illinois. Under the proposed Part 731 Rule filed by Commission Staff on May 8, 2002 and supplemented on June 11, 2002, the two largest ILECs in Illinois, Ameritech Illinois and Verizon, are considered Level 1 Carriers. In Staff’s proposed rules, Level 1 carrier is defined as:

- a) LECs in the State of Illinois that provide Wholesale Service and have a Preexisting Plan; or*
- b) LECs in the State of Illinois that have obligations pursuant to Section 251(c) of the Telecommunications Act, with equal to or greater than 400,000 subscriber access lines in service; or*
- c) LECs in the State of Illinois that provide Wholesale Service and are directed pursuant to a Commission order to comply with all of the requirements of Subparts B, C, D and E pursuant to Section 731.635.*

The “Preexisting” wholesale service quality plans for Ameritech and Verizon, respectively, were developed in a collaborative proceeding in which the LECs, Staff and interested competitive local exchange carriers participated. Under the Staff’s proposed Part 731 rule Ameritech and Verizon will remain subject to the terms of their company-specific wholesale service quality plans previously approved by the Commission. As a result, the Part 731 Rules for Level 1 carriers, as recommended by Staff, address procedures for extending and expanding the existing Ameritech and Verizon service quality plans in the future. Staff Ex. 7.0, Attachment 7.1 Sections 731.200 through 731.500.

The Commission has previously recognized that wholesale service quality issues do not fit into a “one size fits all” bucket. The two largest ILECs in the state, Ameritech and Verizon have each developed company-specific wholesale service quality plans in the context of two separate dockets: 98-0555 and 98-0866, respectively. These plans were developed in the respective dockets based on the wholesale services being provisioned by Ameritech and Verizon, and based upon issues and concerns raised by CLECs actually purchasing wholesale services from these two carriers. See Patrick, Transcript at 409. It would not be appropriate to subject Verizon to the wholesale standards established for Ameritech in 98-0555 or as part of Ameritech long distance 271 efforts. Similarly, it would not be appropriate to apply Verizon’s prequalified wholesale service quality plan to Ameritech. More importantly, it would not have been appropriate to establish wholesale standards without the input of Ameritech or Verizon. Dr. Patrick, on behalf of Staff explained further:

- A. My understanding of portions of the plans, in particular the standards that I’ve taken a look at, my understanding of the collaboratives was**

that each of the companies were able to approve different standards based on their own engineering systems. And they were tailored to the individual companies in that way. And certainly for the standards themselves, my understanding is that would not be appropriate.

Q. It would not be appropriate to apply the Verizon plan to Ameritech because Verizon's plan is based on Verizon's systems?

A. Well, I think it would be administratively difficult to apply one company's standards to the other.

Patrick, Transcript at 411. For the same reasons, it is not appropriate for two different Level 2 Carriers, that use different engineering systems, have different wholesale activity and issues, to be subject to the same wholesale service quality standards.

C. Staff's Proposed Rules Fail to Take Into Account the Existing Service Quality Related Terms Level 2 Carriers and CLECs have Previously Negotiated and Included in Existing Interconnection Agreements.

Outside of the context of this docket, incumbent LECs in Illinois have addressed issues associated with the provisioning and repair of wholesale services in their interconnection agreements. Some CLECs and ILECs have negotiated unique and specific terms and conditions addressing service quality issues in their interconnection agreements approved by the Illinois Commission. For example, Citizens and IRCA member Diverse Communications, Inc. has negotiated specific provisions that require unbundled loops to be forecasted. See Citizens Cross Ex. 2; Hendricks, Transcript at 440, lines 10-14.

Despite the fact that some incumbent LECs have negotiated specific service quality terms in their interconnection agreements Staff has recommended that all Level 2 Carriers be subject to wholesale service quality standards that will effectively displace the existing terms and conditions in recently negotiated interconnection agreements. See McClerren Transcript at 527 (acknowledging that Staff's proposed rules do not address

“forecasting” issues). If Level 2 Carriers were afforded the opportunity to present their own company specific wholesale service quality plan, the Level 2 Carrier and interested CLECs would have the ability to consider and possibly include wholesale service quality terms like “forecasting” that had previously been agreed upon in a company-specific wholesale service quality plan.

D. The Commission Should Allow Level 2 Carriers to Submit Their Own Company Specific Wholesale Service Plans For Review and Approval

Given the limited and varying levels of competitive activity in Level 2 Carrier exchanges and the fact that each Level 2 Carrier may have its own company-specific processes and systems to provision wholesale services, the Commission should allow each Level 2 LEC to file a proposed service quality plan with the Commission describing its company-specific wholesale service commitments. Citizens proposed alternative provisions to be included in Subpart F of the Staff’s proposed rule to allow a Level 2 Carrier to file their own wholesale service quality plan in lieu of the requirements contained in Staff’s proposed Subpart F. Citizens’ proposed language to included in was included in Section of Citizens Exhibit 1.1 and is attached to this Brief at Attachment A.

Under Citizens proposal Level 2 Carriers would have the option to file a Wholesale Service Quality Plan which would be subject to review and approval by the Commission. Each carrier would be afforded the opportunity to develop its own Wholesale Service Quality Plan based on the nature of its business and the wholesale services and issues applicable to that company. Interested parties would be given a full opportunity to intervene and participate in a proceeding to review and approve the Level 2 Carrier’s wholesale service quality plan. Level 2 Carriers that elected not to file a

Wholesale Service Quality Plan would instead be subject to the wholesale requirements in Subpart F.

Staff has opposed Citizen's recommendation that Level 2 Carriers be allowed to file their own company specific wholesale service quality plan on the basis that reviewing and approving a company specific plan for Level 2 Carriers would impose considerable costs on the Staff and interested CLECs that wanted to participate in the review and approval of a Level 2 Carrier's company specific plan. Despite these assertions, Staff has not provided any evidence of how much time or how burdensome it would be to establish Level 2 Carrier plans and instead indicated that Staff largely relied on the IRCA witnesses' assertions that the costs to participate in such a process would be considerable and therefore unreasonable. Staff Witness McClerren testified:

Q. When you say "considerable cost," have you undertaken any estimate to determine exactly in terms of dollars what it would cost a CLEC to participate in that type of proceeding with a Level 2 Carrier?

A. No. I'm relying there on the testimony of Jason Hendricks particularly.

McClarren, Transcript at 532-533. While it may be true that interested CLECs and Staff would need to expend some resources and time developing company specific wholesale service quality plans for Level 2 Carriers, there has been no comparison of this burden to the burden to be placed on Level 2 Carriers as they attempt to comply with the "one size fits all" standards proposed by Staff. Given the minimal volumes of wholesale services provisioned to date and the more limited nature of the competitive activity occurring in the territory of Level 2 Carriers, there is no reasonable basis to conclude that the process for reviewing and approving a Level 2 Carrier's company specific wholesale service quality plans will be as confrontational, time-consuming or difficult as it has been for

Level 1 carriers. Citizens urges the Commission to continue to recognize the diversity within the ILEC community by not imposing “one size fits all” performance measurements and standards on Level 2 Carriers and to allow each Level 2 Carrier to file and seek approval of its own company specific wholesale service quality plan.

CONCLUSION

For each of the foregoing reasons, Citizens Telecommunications Company of Illinois respectfully requests that the Commission adopt its proposed changes to Staff’s Proposed Part 731 Rules.

Dated: September 25, 2002

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Kevin Saville", is written over a light blue rectangular background.

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CITIZENS' INITIAL BRIEF

ATTACHMENT A

Filing of Wholesale Service Quality Plans by Level 2 Carriers

- a) *On April 1, 2003, and every two years thereafter, every Level 2 Carrier may file with the Commission for review and approval a Wholesale Service Quality Plan as specified in, and pursuant to, Subparts b, c, and d of this Part. For any filing due after April 1, 2003, if a Level 2 Carrier proposes to maintain, without any additions, deletions or modifications, its existing Wholesale Service Quality Plan, the Level 2 Carrier may file, in lieu of filing a new Wholesale Service Quality Plan, a verified statement indicating that it proposes to maintain in effect, without any additions, deletions or modifications, its existing Wholesale Service Quality Plan.*
- b) *For each investigation or review of a Wholesale Service Quality Plan filed with the Commission for review, unless otherwise ordered by the Administrative Law Judge or the Commission, the Commission shall initiate a proceeding and schedule a prehearing conference (see 83 Ill. Adm. Code 200.300) to occur no more than 21 days after the filing date. The purpose of the proceeding shall be to determine the adequacy and appropriateness of each Plan with respect to the requirements of the Act and this Part, and to adopt a Wholesale Service Quality Plan for the filing carrier. The carrier filing the Plan shall be a party to the proceeding. Other parties may intervene, pursuant to the Commission's Rules of Practice. The proceeding will be scheduled, unless otherwise ordered by the Administrative Law Judge or the Commission, so that a Proposed Order is presented to the Commission by the Administrative Law Judge no later than 3 months after the date of the carrier's filing as specified in Section 731.200. The Commission will adopt a carrier's Plan if it complies with the requirements of this rule. If no party objects to the Level 2 Carrier's filed Wholesale Service Quality Plan and all active parties agree to proceed without a hearing, the Commission may adopt that Plan without hearing if it satisfies the requirements of this rule*
- c) *Each carrier filing a Wholesale Service Quality Plan shall file prepared direct testimony and exhibits in support of the carrier's Plan. Prepared direct testimony shall be in compliance with the Commission's Rules of Practice (83 Ill. Adm. Code 200). At a minimum, the prepared direct testimony and exhibits shall address and/or include the following:*
 - 1) *The carrier's wholesale service quality record over the last twelve months, including a summary of performance and of any remedy*

payments or credits paid, given and/or assessed over that time period.

- 2) *All changes to the carrier's Wholesale Service Quality Plan most recently adopted by the Commission or, if such carrier does not have a previously adopted Wholesale Services Quality Plan the basis for all Wholesale Service Quality measures and standards proposed by the carrier.*
 - 3) *Proprietary and Confidential Information. Any data, information or studies which are confidential, proprietary or trade secret in nature shall be so marked by the carrier. The carrier shall separate from its filing that information which is so marked as confidential, proprietary or trade secret in nature from the material which is to be made public.*
- d) *Each Wholesale Service Quality Plan shall include, at a minimum, the following components:*
- 1) *A set of wholesale measures and standards covering all necessary parts of a carrier's interaction with their wholesale customers. These measures and standards should include, but not be limited to, the following activities; FOCs, provisioning, and maintenance and repair. The services to be covered for a Level 2 Carrier shall include, but not be limited to, Unbundled Local Loops, Interconnection Trunks, Resold Local Services, Collocation, Loss Notification, Customer Service Record and those Wholesale Services covered in such carrier's most recently adopted Wholesale Service Quality Plan.*
 - 2) *Established benchmarks and standards on a per measure basis to provide a clear indication of the minimum performance level the carrier intends to provide.*
 - 3) *Fully defined business rules on a per measure basis that are sufficient to describe what is being reported by the measure. Business rules shall include an applicable title, detailed definition, any exclusions, applicable standards or benchmarks, levels of disaggregation, and the specific calculation methodology used by the carrier.*
 - 4) *Self-executing remedy provisions deemed sufficient to modify a Level 2 Carrier's actions in the event of noncompliance with the standards contained therein.*

- 5) *Reporting policies and procedures so that all parties understand exactly when and how the Level 2 Carrier will report data. These policies and procedures should also cover data and remedy restatements in addition to the regular monthly reporting of carrier performance. Each carrier's Wholesale Service Quality Plan shall provide that the Level 2 Carrier will report monthly data to carriers purchasing Wholesale Services.*
- 6) *A provision for periodic audits of the wholesale performance data.*
- e) *To the extent a Level 2 Carrier elects to file its own proposed Wholesale Service Quality Plan, the Level 2 Carrier will not be subject to the remaining provisions of Subpart F.*